

32086
EB

SERVICE DATE - SEPTEMBER 12, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33740 (Sub-No. 1)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY – PETITION
FOR DETERMINATION OF COMPENSATION AND OTHER TERMS

Decided: September 11, 2001

In our decision in this proceeding, served June 22, 2001, we determined that The Burlington Northern and Santa Fe Railway Company (BNSF) has a right under 49 U.S.C. 10901(d) to cross approximately 1,500 feet of trackage in Keokuk, IA, owned by the Keokuk Junction Railway Company (KJRY).¹ On July 23, 2001, BNSF filed a petition asking us to establish compensation and other terms for that crossing. KJRY replied on August 7, 2001.

In its petition, BNSF seeks the resolution of two issues. First, it asks us to set an appropriate level of compensation for crossing under 49 U.S.C. 10901(d)(2). Second, BNSF seeks a refund, with interest, of the difference between the monies paid to KJRY under an interchange arrangement during the period KJRY prohibited BNSF from crossing and the amount of compensation that we find to be appropriate for the crossing. Petitioner includes a proposed procedural schedule for resolving these issues.

In its reply, KJRY objects to the schedule proposed by BNSF. Due to the alleged complexity of the issues, KJRY proposes a bifurcated procedural schedule under which the parties would concurrently provide argument on: (1) the appropriate methodology for calculating future compensation; and (2) terms for liability, operations, and a refund (if appropriate).

Each party indicates in its pleading that it has been and is willing to negotiate an agreement on terms for crossing, but that it is only through the other side's recalcitrance that this dispute has reached the Board. See Petition at 2; Reply at 4. Based on the representations of the parties that each is willing to negotiate, we will appoint Administrative Law Judge Joseph Nacy of the Federal Energy Regulatory Commission to bring the parties together to mediate the dispute. If the parties fail to reach an agreement under this mediation within 30 days of the service of this order, the Board will issue a procedural schedule for the submission of statements.

¹ KJRY recently filed a petition for judicial review of that decision in the United States Court of Appeals for the District of Columbia Circuit. Keokuk Junction Ry. v. Surface Transp. Bd., No. 01-1305 (D.C. Cir. filed July 11, 2001).

Both parties have agreed that, in the interim, compensation for crossing should be set at the level that BNSF was paying KJRY prior to the dispute.² The agreement on interim compensation is reasonable and will be imposed.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Administrative Law Judge Joseph Nancy is assigned to mediate the dispute for a period of 30 days from the service date of this decision. A copy of this decision and all pleadings and decisions in this proceeding will be sent to Judge Nancy at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 1st Street, NW, Room 11F-25, Washington, DC 20426. Because Judge Nancy's role is that of a mediator, each of the parties should contact Judge Nancy at (202) 219-2508 to discuss the case individually, prior to his bringing them together.

2. Interim compensation for crossing will be at the level agreed upon by the parties until such time as a new agreement is reached or the Board sets compensation and other terms for crossing.

3. This decision is effective on its date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary

² KJRY has expressed concern that its agreement to a level of interim compensation should not prejudice the outcome of this proceeding. We agree that KJRY has not relinquished any rights or conceded any arguments in this regard.